

In the United States Court of Federal Claims

No. 19-04C

(E-Filed: February 15, 2019)

JUSTIN TAROVISKY, <u>et al.</u> ,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
)

ORDER

On February 13, 2019, the parties filed a joint status report, ECF No. 13. In addition, three motions are presently pending before the court: (1) plaintiffs' motion for leave to file a second amended complaint, ECF No. 8; (2) defendant's motion to consolidate, ECF No. 14; and (3) defendant's motion to suspend proceedings, ECF No. 15. The court will address each in turn.

I. Motion for Leave to File Second Amended Complaint

In the joint status report, defendant represents that it does not oppose plaintiffs' motion for leave to file a second amended complaint. See ECF No. 13 at 1. The "principal reasons" for which plaintiffs seek the court's leave are "to add the names of approximately fifteen new plaintiffs wishing to opt in to the litigation and to acknowledge that Defendant failed to pay Plaintiffs and similarly situated potential collective action members on their regularly scheduled pay day for the December 23-January 5 pay period." ECF No. 8 at 1-2. For good cause shown, plaintiffs' motion for leave to file a second amended complaint is **GRANTED**.

II. Motion to Consolidate

In its motion to consolidate, ECF No. 14, defendant proposes that the court consolidate this case with eleven other cases that are presently pending before the court, including:

1. Eleazar Avalos, et al. v. United States, Case No. 19-48C;
2. D.P., et al. v. United States, Case No. 19-54C;
3. L. Kevin Arnold, et al. v. United States, Case No. 19-59C;
4. Roberto Hernandez, et al. v. United States, Case No. 19-63C;
5. Tony Rowe, et al. v. United States, Case No. 19-67C;
6. Plaintiff No. 1, et al. v. United States, Case No. 19-94C;
7. I.P., et al. v. United States, Case No. 19-95C;
8. Lori Anello, et al. v. United States, Case No. 19-118C;
9. Joseph Abrantes, et al. v. United States, Case No. 19-129C;
10. Brian Richmond, et al. v. United States, Case No. 19-161C; and
11. Quentin Baca, et al. v. United States, Case No. 19-213C

ECF No. 14 at 1-2. Defendant has filed companion motions to consolidate in each of these cases. See Eleazar Avalos, et al. v. United States, Case No. 19-48C, ECF No. 8; D.P., et al. v. United States, Case No. 19-54C, ECF No. 7; L. Kevin Arnold, et al. v. United States, Case No. 19-59C, ECF No. 10; Roberto Hernandez, et al. v. United States, Case No. 19-63C, ECF No. 8; Tony Rowe, et al. v. United States, Case No. 19-67C, ECF No. 8; Plaintiff No. 1, et al. v. United States, Case No. 19-94C, ECF No. 13; I.P., et al. v. United States, Case No. 19-95C, ECF No. 9; Lori Anello, et al. v. United States, No. 19-118C, ECF No. 6; Joseph Abrantes, et al. v. United States, Case No. 19-129C, ECF No. 5; Brian Richmond, et al. v. United States, Case No. 19-161C, ECF No. 6; and Quentin Baca, et al. v. United States, Case No. 19-213C, ECF No. 9.

The parties agree that this case should be consolidated with ten of these eleven cases, but plaintiffs state that they “will likely oppose any motion that seeks to include cases alleging distinct claims unrelated to the Fair Labor Standards Act collective action claims brought by Tarovisky, et al., such as in Joseph Abrantes, et al., No. 19-129C.” ECF No. 13 at 2. The court is inclined to favorably consider consolidation, but will not rule on this motion, or those that have been filed in the directly related cases, until either the matter has been fully briefed, or until the court receives notification that all parties agree to the consolidation.

III. Motion to Suspend Proceedings

The primary disagreement reflected in the joint status report is whether this case should remain stayed pending resolution of the on-going proceedings in Martin, et al. v. United States, Case No. 13-834, in which the parties are engaged in damages calculations. See Martin, ECF No. 191 (joint status report). Defendant contends that “[s]uspending proceedings in this case, and each of the other 11 cases, pending a final decision in Martin, including any appeal, would greatly assist the Court and the parties in the efficient conduct of these proceedings.” ECF No. 15 at 3. In the joint status report, plaintiffs oppose the motion, arguing that “judicial economy does not warrant suspending

the proceedings in the instant case,” and would “only work to prejudice employees currently unaware of the litigation.” ECF No. 13 at 3.

The court agrees with plaintiffs. The process of calculating damages in Martin, in its current stage, is unlikely to impact the legal issues presented by either this case or the eleven others defendant proposes to consolidate with it. Should the posture of Martin change in a manner that would more directly impact this case, the parties may move the court to consider imposing a stay at that time. As such, defendant’s motion to suspend proceedings in this case, ECF No. 15, is **DENIED**.

IV. Conclusion

Accordingly,

- (1) Plaintiffs’ motion to file a second amended complaint, ECF No. 8, is **GRANTED**. On or before **February 19, 2019**, plaintiffs shall **FILE** its **second amended complaint** as a new and separate entry on the court’s docket (to include all consent forms);¹
- (2) The court will consider the motion to consolidate, ECF No. 14, when the matter either has been fully briefed, or when the court receives notification that all parties agree to the consolidation;
- (3) Defendant’s motion to stay this case, ECF No. 15, is **DENIED**;
- (4) The clerk’s office is directed to **LIFT** the **stay** in this case; and
- (5) The court will consider a schedule to govern this matter going forward after ruling on the motion for consolidation.

IT IS SO ORDERED.

¹ Plaintiffs are reminded that an amended complaint automatically supersedes the previously filed complaint. For docket clarity and case management purposes, until such time that this case is certified as a class action, all consent forms for named plaintiffs—even those previously-filed—shall be attached to the operative complaint. Plaintiffs shall ensure that they comply with this directive when filing their second amended complaint. Filing consent forms for putative class members, as opposed to named plaintiffs, is premature.

s/Patricia E. Campbell-Smith

PATRICIA E. CAMPBELL-SMITH

Judge